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10/764,181	01/23/2004	Sachin Navin Chheda	200314086-1	7860
22879	7590	09/25/2009	EXAMINER	
HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528				HAMO, PATRICK
ART UNIT		PAPER NUMBER		
3746				
			NOTIFICATION DATE	DELIVERY MODE
			09/25/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: SACHIN NAVIN CHHEDA, ROBERT W. DOBBS and
RICARDO ERNESTO ESPINOZA

Application No. 10/764,181
Technology Center 3700

Mailed: September 24, 2009

Before Quita S. Gould, *Supervisory Paralegal Specialist, Contested Cases.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

PRIOR ORDER FOR RETURN

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on July 9, 2009, wherein the Examiner was instructed that corrections were required. A review of the file finds that the required corrections have not been made in entirety. The matters still requiring attention prior to docketing are identified below.

EXAMINER’S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on April 24, 2009, in response to the Examiner’s Answer mailed February 25, 2009.

Title 37, Code of Federal Regulations, §41.43 states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner’s answer responding to any new issue raised in the reply brief.

The Communication mailed September 3, 2009, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner’s Answer as per MPEP§ 1208, part II. A Supplemental Examiner’s Answers requires a Director or designees approval.

It is noted that the September 3, 2009, Communication repeated the same improper response to the Reply Brief as was contained in the Communication mailed June 19, 2009.

To avoid further delay and the necessity of future Orders Returning on this matter, it is suggested that the Examiner consider MPEP § 1208 as guidance. Specifically, Form Paragraph 12.181, “Acknowledgement of

Reply Brief", contains the proper response when an Examiner enters and considers a Reply Brief. Any substantive argument beyond the language of this Form Paragraph constitutes a Supplemental Examiner's Answer.

Correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Communication mailed September 3, 2009;
- 2) generate and mail either:
 - a) a revised Communication properly acknowledging to the Reply Brief dated April 24, 2009, in accordance with MPEP§ 1208, part II.;
 - OR
 - b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate;
- and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QSG/saw

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